REQUEST FOR PROPOSAL

TERM CONTRACT

FOR

ARCHITECTURAL / ENGINEERING SERVICES

IN SUPPORT OF

RAIL and TRANSIT PROJECTS

DRPT
Virginia Department of Rail and Public Transportation
The Smartest Distance Between Two Points

REQUEST FOR PROPOSALS

Issue Date: September 23, 2010 **RFP# 505-11-RR0001**

TITLE: Term Contract for Architect / Engineering Services In Support Of Rail and Transit Projects

Commodity Code: **918-42 Engineering Consulting**

Issuing Agency & Address: **Commonwealth of Virginia**
Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219

Location of Work: **Within Virginia**

Period of Contract: The contract shall be renewable for two additional one year terms, at the Agency's option, for up to a maximum of three (3) one year terms

All inquiries for information should be directed to: Eugene B. Coleman, Sr.
Phone: (804) 786-6777 **E-Mail:** eugene.coleman@drpt.virginia.gov

ALL PROPOSALS MUST BE MAILED OR HAND DELIVERED TO THE ADDRESS ABOVE.

Sealed proposals for furnishing the services described herein will be received until 5:00 p.m. local time on **Thursday, October 28, 2010. Proposals must reach the above address by the deadline stated.**

In compliance with this Request For Proposals, which includes the attached Table of Contents and all provisions and appendices attached and referenced therein, and subject to all the terms and conditions set forth herein, the undersigned offers and agrees to furnish the services described in the RFP cited above and submit this signed proposal which includes this completed and signed page, the completed and signed Forms AE-1, AE-2, AE-3, AE-4, AE-5 and AE-6, and other data as required by the RFP. It is understood that this proposal and the scope of services may be modified, by mutual agreement in subsequent negotiations.

Name and Address of Proposer:

_____ Date: _____

_____ By_____
(Signature in Ink)

_____ Typed Name: _____

_____Zip:_____ Title: _____

FEIN/SSN # _____ Telephone No.( ) _____

PRE-PROPOSAL CONFERENCE: A pre-proposal conference will be held at the State Corporation Commission (SCC), **1300 E. Main Street, Richmond, 2nd floor, Courtroom A, Richmond, Virginia** on **Tuesday, October 12, 2010**, starting at 10:00 a.m.

TABLE OF CONTENTS

Section No.	Description	Page No.
I	Applicability of the CPSM – 2004 edition (A/E Manual)	*4*
II	Purpose	*4*
III	Agency's Right to Issue RFP's and Project Orders	*4*
IV	Scope of Services	*5*
V	Policy on Small Businesses and Businesses Owned by Women and Minorities	*6*
VI	Proposal Requirements	*7*
VII	Evaluation and Award of Contracts	*8*
VIII	Fees	*9*
IX	Contract Term	*10*
X	Project Orders	10
XI	Conflict of Interest	10
XII	Attachment A – Project Background	11
XIII	Attachment B – Vendor eVA Registration Requirements	12
XIV	Attachment C – Federal Requirements	13

NOTE: Electronic copies of Forms AE-1, AE-2, AE-3, AE-4, AE-5 and AE-6 are available for download at:
http://www.dgs.state.va.us/tabid/826/Default.aspx?udt_1673_param_detail=159

The "Small Businesses and Businesses Owned by Women & Minorities" Data Form is available for download at:
http://www.dgs.state.va.us/tabid/826/Default.aspx?udt_1673_param_detail=271

I. APPLICABILITY OF THE A/E MANUAL

The Commonwealth of Virginia Construction and Professional Services Manual – 2004 Edition, Chapters 1 through 10 (the A/E Manual) shall apply to the contract awarded pursuant to this RFP and is incorporated by reference herein in its entirety.

Proposer's attention is directed to Chapter 2, Definitions, for definitions of terms used in this RFP. The terms "Agency" and "Owner" are used interchangeably in the material referenced in this RFP and mean the public body issuing this solicitation for services and with whom the successful A/E Proposer will enter into an agreement. For purposes of clarity and uniformity in this RFP, only the term "Agency" will be used herein.

Proposer's attention is also directed to Chapter 3, General Terms and Conditions for Professional Service Contracts. Also, see supplemental General Condition, Section 52, American Recovery and Reinvestment Act of 2009 (ARRA) at: http://www.dgs.virginia.gov/LinkClick.aspx?fileticket=1vje1coUKXA%3d&tabid=826&mid=1673

II. PURPOSE

The Department of Rail and Public Transportation (DRPT), an Agency of the Commonwealth of Virginia, is issuing this Request for Proposal (RFP) to solicit proposals for a Term Contract for professional architectural and/or professional engineering services to be provided on an "as needed" basis pursuant to Project Orders issued during the contract term. The contract shall be for one year, renewable for two additional one year terms, at the Agency's option, for up to a maximum of three (3) one year terms. It is the intent of DRPT to award to multiple qualified firms. Tasks authorized under this contract will be in support of Rail and Transit Projects throughout Virginia. These projects may be supported by funds from the Federal Railroad Administration (FRA) and Federal Transit Administration (FTA) so all work must be in compliance with the terms of the federal grants. See Attachment C for required federal terms.

III. AGENCY'S RIGHT TO ISSUE RFP'S AND PROJECT ORDERS:

The Agency reserves the right, at its sole discretion, to issue RFP's for similar work, for other disciplines or types of work, and for other projects as the need may occur. An Architectural/Engineering Firm (A/E) may have only one A/E Term Contract in effect with an Agency or its subsidiaries or branches at any time.

The Agency also reserves the right to issue Project Orders to other A/E's under Term contracts at its sole discretion, based on its evaluation of each A/E's qualifications, expertise, current workload, capabilities, performance record, location or distance to the project, and other factors as may be pertinent to the particular project. The Agency also reserves the right under the provisions of this Contract to issue a Project Order to the A/E to provide services of a similar type or discipline covered by this RFP to a subsidiary, branch or state agency in the same geographic area.

IV. SCOPE OF WORK

The scope of service to be provided under this contract may cover the full range of activities required by federal, state, regional and local processes for transportation planning and project development. These activities include: quality assurance program plan, project feasibility/identification, alternative analysis, preliminary engineering/ environmental impact studies, final engineering/final design, public participation, financial planning, project inspection, and operations planning and analysis. DRPT must address these activities in its oversight and implementation of passenger rail, freight rail, and transit projects throughout the Commonwealth.

Potential Services to be provided

The architectural/engineering firms selected under this RFP for professional services shall provide the following services:

Planning and Feasibility Studies Services–

- **Conduct planning and feasibility studies for passenger and freight rail and transit projects**
- **Develop demand or market forecast using transportation forecasting models**
- **Develop schematic designs and estimates to support studies**
- **Develop operating scenarios using operational modeling and other tools**
- **Provide public benefit determination and implementation services including modeling, environmental, design and construction oversight or services in accordance with the Code of Virginia sections listed:**

  S 33.1-221.1:1.1 Rail Enhancement Fund
  S 33.1-221.1:1.2. Shortline Railway Preservation and Development Fund
  S 33.1-221.1:1. Fund for Construction of Railroad Industrial Access

Program Management Services-

- **Develop project management plans inclusive of design, construction, special consultants, etc. for implementation of a project**
- **Prepare and submit presentations as required for all levels of government and public presentations on projects**
- **Coordinate program management with stakeholders**

Design Services-

- **Design services shall comply with all requirements of the Construction and Professional Services Manual**
- **The selected AE firms shall provide full services either in house or via consultant for all federal, state and local government environmental requirements**
- **Provide review services as may be required by DRPT**
- **Assure all design documents for construction comply with all federal, state and local government requirements and incorporate the same in all specifications inclusive of ARRA requirements and wage requirements**
- **Assure all projects conform with all required federal, state and local government guidelines**
- **Assure that all projects comply with all updated energy standards**
- **Assure that all documents comply will all applicable building codes**
- **Assure that all requirement programming is met and defined in the design documents**

Construction Administration Services-

- **Provide all construction administration services as defined in the CPSM**
- **Provide additional construction administration services as may be defined in the MOU**

V. POLICY ON SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES:

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in state procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, or other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses is required with any proposal for A/E services where the total A/E contract amount may exceed $100,000. Since the potential for project orders under the contract exceeds $100,000, the Proposer must provide information on its past utilization of Small, Women, and Minority Owned disadvantaged businesses, and must also state any plans to utilize such businesses and the manner in which they may be utilized under this Contract. Electronic copies of the "Small Businesses and Businesses Owned by Women & Minorities" Data Forms are available for download at: *http://www.dgs.state.va.us/tabid/826/Default.aspx?udt_1673_param_detail=271*

In accordance with federal requirements, the Respondent shall indicate the percentage of planned Disadvantaged Business Enterprise (DBE) participation and specify the types of work to be performed by DBE sub consultants.

All DBE firms to be considered under this plan must be certified with the Virginia

Department of Minority Business Enterprise (DMBE). If the DBE firm is not currently certified, the Respondent must assert that they are eligible to be certified under the rules promulgated by DMBE, and the DBE firm must receive such certification prior to being counted under the plan. The Virginia Department of Minority Business Enterprise can be contacted at (804) 786-6585 or at www.dmbe.virginia.gov. The DBE goal for this project is 15%; if the DBE is the Respondent, the Respondent will receive full credit for planned involvement.

VI. PROPOSAL REQUIREMENTS:

A. Proposals shall be signed by an authorized representative of the A/E. By submitting a proposal, the proposer certifies that all information provided in response to this RFP is true and accurate. Failure to provide information required by this RFP will ultimately result in rejection of the proposal.

B. Proposals should be prepared simply and economically, providing a straightforward, concise description of the A/E's capabilities for satisfying the requirements of the RFP. Emphasis should be on completeness and clarity of content. The expectation is that the proposal would be 100 pages or less.

C. The Respondent's proposal shall include: the completed and signed RFP cover page 1; the completed and signed Forms AE-1, AE-2, AE-3, AE-4, AE-5, and AE-6; and the completed "Small Businesses and Businesses Owned by Women & Minorities" Data. One (1) manually signed original and five (5) copies of the proposal shall be submitted to the Agency. Each copy of the proposal shall be bound in a single volume where practical.

D. All documentation submitted with the proposal shall be included in that single bound volume. Elaborate brochures and other representations beyond those sufficient for presenting a complete and effective proposal are neither required nor desired.

E. Any information thought to be relevant, but not specifically applicable to the enumerated scope of Work, may be provided as an appendix to the proposal. If publications are supplied by the proposer to respond to a requirement, the response should include reference to the document number and page number. Publications provided without such reference will not be considered relevant to the RFP.

F. To reduce the effort and expense of responding to RFP's, provide uniformity in the type information requested, and enhance the review and evaluation process, the **standard Forms AE-1 thru AE-6, ARCHITECTURAL/ENGINEERING FIRM DATA shall be used by A/E's responding to State agency RFP's.**

G. Descriptions of these forms and instructions for completing the forms are included in the A/E Manual. Hard copies of Forms AE-1, AE-2, AE-3, AE-4, AE-5 and AE-6 may be found in Appendix B of the Manual. Electronic copies of the "Small Businesses and Businesses Owned by Women & Minorities" Data Form is available for download at:

http://www.dgs.state.va.us/tabid/826/Default.aspx?udt_1673_param_detail=271

VII. EVALUATION AND AWARD OF CONTRACTS:

A. Evaluation Criteria: Proposals shall be evaluated by the Agency using the following criteria:

1. Expertise, experience, and qualifications of the A/E's personnel in each discipline that may provide services relevant to the RFP.

2. Expertise, experience and qualifications of any special consultants proposed.

3. Geographic location of the A/E's office where work will be performed in relation to the project location(s).

4. A/E's plan to respond to requests for services and ability to complete any Project Orders in a timely manner.

5. Expertise and past experience of the A/E in providing services on other Term Contracts or on projects of similar size, scope and features as those required for the Scope of Services on this RFP.

6. A/E's willingness to provide services on the small projects associated with Term Contracts for a reasonable fee as determined by the agency.

7. A/E's recent (past 5 years) experience / history in designing projects within the established "Design-not -to -exceed" budget.

8. A/E's experience in providing services in conformance to the State's Construction and Capital Outlay procedures including Codes, Standards, Accessibility and Building Efficiency.

9. Use of small businesses and businesses owned by women and minorities as consultants, subcontractors, suppliers or support services.

10. Size of the firm relative to the size of the project(s).

11. Financial Responsibility as evidenced by the A/E carrying Professional Liability Insurance.

12. Generally, the selection committee will consider the A/E's overall suitability to provide the services for the Term Contract within the time, budget and operational constraints that may be present, and the comments and/or recommendations of the A/E's previous clients, references and others.

B. AWARD OF CONTRACT: The Agency shall engage in individual discussions and interviews with a minimum of three offerors deemed fully qualified, responsible and

suitable on the basis of initial responses, and with professional competence to provide the required services. Repetitive informal interviews are permitted. Proposers shall be encouraged to elaborate on their qualifications, performance data, and staff expertise relevant to the proposed contract. Proprietary information from competing proposers (including any data on estimated man hours or rates and the plan for accomplishing the scope of work) will not be disclosed to the public or to competitors provided such information is duly marked as "Proprietary Information" by the Proposer and the designation is justified as required by §2.2-4342, Code of Virginia, as amended. At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Agency shall rank, in the order of preference, the interviewed proposers whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted with the Proposer ranked first to establish an acceptable MOU, including marked up hourly rates considered fair and reasonable, and which compare favorably with the typical labor rates for the various A/E skill levels required for the work. A contract award will be made to that Proposer provided the A/E accepts / agrees to the Project Order #1 offered. Otherwise, negotiations with the Proposer ranked first shall be formally terminated and negotiations conducted with the Proposer ranked second, and so on, until such a contract can be negotiated at a fair and reasonable rates and the Project Order #1 agreed to. It is the intent of DRPT to award to multiple qualified firms.

VIII. FEES:

A. The Memorandum of Understanding prepared by the Agency will document the negotiated acceptable labor rates for the various A/E classifications/disciplines/skill levels. These rates will be used by the Agency in arriving at lump sum fees and any hourly rate work that is authorized by the Agency for Project Orders issued under the Term Contract resulting from this solicitation.

B. If a Project Order is to be performed on a lump sum basis, the Agency shall determine a lump sum based on the Scope of Service required, the estimated man-hours required for each classification/discipline/skill level, and the labor rates agreed upon during the contract negotiations.

C. Any individual Project Order fee shall not exceed $200,000 and the aggregate total of fees for all Project Orders issued during the Contract Term shall not exceed $2,000,000.

IX. CONTRACT TERM:

Under this Contract, Project Orders may be issued during the one-year following the date of execution of this Contract. This one-year period shall be referred to as the "Contract Term." If a Project Order is issued during the Contract Term which, in the aggregate total of it, all previously issued Project Orders and any Change Orders to the previous Project Orders, reaches the $2,000,000 limit, then no further Project Orders may be issued during that Contract Term. It is understood that the A/E's Work under the Project Orders issued may not be completed during the Contract Term; however, all terms and conditions of this Contract, including all rights and obligations, shall survive until the Work is completed, except the Agency's right to issue, and the A/E's right to accept, additional Project Orders.

The Agency may, at its sole discretion, renew the Contract for an additional one year Contract Terms provided the option to renew was indicated in the RFP. If the Agency exercises its option to renew, the second Contract Term shall begin one year from the date of the execution of this Contract or the date that the Agency notifies the A/E that the option to renew is being exercised, which ever occurs first. A new aggregate limit of $2,000,000 shall apply to the second Contract Term, without regard to the dollar amounts of Project Orders issued during the first year of the Contract. Any unused amounts from the first Contract Term are forfeited and shall not carry forward to the second Contract Term. The Agency may, at its sole discretion, exercise the one additional one year term renewal a maximum of two (2) times at the option of the Agency Director.

X. PROJECT ORDERS:

The first Project Order will be issued at the same time as the execution of the A/E Term Contract. It will authorize the A/E to perform the Work for a lump sum amount or at the marked up hourly rates agreed to and set forth in the MOU attached to the A/E Term Contract. The maximum fee allowed by law for any Project Order is $200,000 which includes all fees and reimbursable expenses and contingencies.

It is understood that more than one Project Order may, at the Agency's sole discretion, be offered to the A/E during the Contract Term. Although the potential exists for multiple project orders during the Contract Term with aggregate fees up to $2,000,000, the Agency does not represent or guarantee that the A/E will receive more than one Project Order.

XI. CONFLICT OF INTEREST:

Offerors that are awarded a contract under this RFP may not be eligible for certain task orders if they are working on a related contract. This determination will be made at the sole discretion of the Agency. All Offerors that are awarded a contract under this RFP must notify the Agency immediately of any conflicts that exist when they are asked to submit a proposal for a task order.

XII. ATTACHMENT A

Project Background

The following is a list of pending and anticipated assignments that may be needed under this contract. This is not intended to be an all inclusive list.

Southeast High Speed Rail (SEHSR) Corridor Engineering Oversight and Plan Review

1. Arkendale to Powells Creek – Eleven (11) miles of third track and related improvements. Includes review and comment of design plans, field review of work underway for engineering accuracy/compliance to design, and plan approval.
2. Richmond Area Improvements – Preliminary engineering design of certain rail improvements funded by FRA grant. Design to be accomplished jointly by DRPT & CSX. Includes project design development, comment and approval.
3. Norfolk Train Improvement – Provide review of railroad design and construction from Petersburg area to Norfolk. This project includes significant track, signal, and terminal improvement and development. Includes review or development of track design, field review of work underway for engineering accuracy/compliance to design, and plan approval.

Federal Railroad Administration (FRA) PE/ NEPA Applications

1. SEHSR Corridor, Richmond Area to Washington, D.C. Project Segment Complete MAS 90, Tier II EIS. Engineering input, development or review of design and plan approval.
2. New Appomattox River Bridge - Provide preliminary engineering for bridge construction. Engineering input, development or review of design and plan approval.

Transit Facility Projects

1. Develop a statewide manual outlining the process, procedures and requirements for implementing transit facilities funded by DRPT.
2. Conduct cost estimate reviews for transit facility projects.
3. Develop an oversight program to monitor and report on construction progress.

XIII. ATTACHMENT B

Vendor eVA Registration Requirements

eVA Vendor Registration: The bidder or offeror shall be a registered vendor in eVA. The offeror must have registered in eVA prior to the deadline for submission of responses to this RFP to be eligible for the award of this contract for professional services.

The eVA Internet electronic procurement solution, www.eVA.virginia.gov, streamlines and automates government purchasing activities for the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide construction and/or professional services to the Commonwealth shall participate in the eVA electronic procurement solution whether through the eVA Basic Vendor Registration Service or through the eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in their bid/proposal being rejected.

a. eVA Basic Vendor Registration Service: $0.00 annual registration fee* plus the appropriate order Transaction Fee specified below.

b. eVA Premium Vendor Registration Service: $0.00 annual registration fee* plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus electronic notification of business opportunities that match the vendor's registered commodities.

c. For orders issued August 16, 2006 and after, the Vendor Transaction Fee shall be:
   (i) DMBE-certified Small Businesses: 1%, capped at $500 per order.
   (ii) Businesses that are <u>not</u> DMBE-certified Small Businesses: 1%, capped at $1,500 per order.

eVA Contracts and Orders: It is anticipated that the contract will result in multiple purchase orders (i.e., one for each delivery requirement) with the eVA transaction fee specified below assessed for each order.

a. For orders issued August 16, 2006 and after the Vendor Transaction Fee shall be:
   (i) DMBE-certified Small Businesses: 1%, capped at $500 per order.
   (ii) Businesses that are <u>not</u> DMBE-certified Small Businesses: 1%, capped at $1,500 per order.

The eVA transaction fee will be invoiced by the Department of General Services approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. This fee is not reimbursable under this contract. Any adjustments (increases/decreases) will be handled through purchase order changes.

XIV. ATTACHMENT C

Federal Requirements

The following requirements are incorporated into this contract and shall be incorporated in all design documents for use by the General Contractor into all subcontracts. Furthermore, these provisions shall be required for all tiers of subcontracts for this project.

1. ENERGY CONSERVATION REQUIREMENTS 42 U.S.C. § 6321 *et seq.*, 49 C.F.R. pt 18

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

2. CLEAN WATER REQUIREMENTS 33 U.S.C. § 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq*. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

3. LOBBYING 31 U.S.C. § 1352, 49 C.F.R. pt 19, 49 C.F.R. pt 20

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. § 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and U. S. Department of Transportation (DOT) implementing regulation, "New Restrictions on Lobbying," at 49 C.F.R. § 20.110(d)

- Language in Lobbying Certification is mandated by 49 C.F.R. pt 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 C.F.R. pt 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 C.F.R. pt 20, as amended by "Government Wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 C.F.R. pt 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended by the Lobbying Disclosure Act of 1995, Pub. L. No. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq*.] - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 C.F.R. pt

20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 C.F.R.pt 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding $100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (Pub. L. No. 104-65, to be codified at 2 U.S.C. § 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure

or fails to file or amend a required certification or disclosure form shall be subject to A civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

4. FEDERAL CHANGES 49 CFR pt 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. CLEAN AIR 42 U.S.C. § 7401 *et seq*., 40 C.F.R. § 15.61, 49 C.F.R. pt 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq*. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

6. RECYCLED PRODUCTS 42 U.S.C. § 6962, 40 C.F.R. pt 247, Exec. Order No. 12873

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. pt 247, and Exec. Order No. 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. pt 247.

7. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter

resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS, 31 U.S.C. § 3801 *et seq*., 49 C.F.R. pt 31, 18 U.S.C. § 1001, 49 U.S.C. § 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq*. and DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. pt 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

9. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Suspension and Debarment

This contract is a covered transaction for purposes of 49 C.F.R. pt 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 C.F.R. § 29.995, or affiliates, as defined at 49 C.F.R. § 29.905, are excluded or disqualified as defined at 49 C.F.R. §§ 29.940 and 29.945.

The contractor is required to comply with 49 C.F.R. pt 29, Subpart C and must include the requirement to comply with 49 C.F.R. pt 29, Subpart C in any lower tier covered transaction it enters into.
By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department of Rail and Public Transportation. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Department of Rail and Public Transportation, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 C.F.R. 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. PRIVACY ACT 5 U.S.C. § 552

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

11. CIVIL RIGHTS REQUIREMENTS & VIRGINIA'S NON'S DISCRIMINATION CLAUSE, 9 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 C.F.R. pt 1630, 41 C.F.R. pt 60 *et seq*.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. pt 60 *et seq*., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. pt 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

12. DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

Background and Applicability
The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause

subsection b flow down to subcontracts. A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (*see* section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of 49 C.F.R. pt 26, *and Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. pt 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department of Rail and Public Transportation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 C.F.R. § 26.13(b)).

1. The names and addresses of DBE firms that will participate in this contract;

2. A description of the work each DBE will perform;

3. The dollar amount of the participation of each DBE firm participating;

4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

6. If the contract goal is not met, evidence of good faith efforts to do so.

c. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from DRPT. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Department of Rail and Public Transportation and contractor's receipt of the partial retainage payment related to the subcontractor's work.

e. The contractor must promptly notify DRPT, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts

to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Department of Rail and Public Transportation.

13. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS - FTA Circular 4220.1E

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

14. FTA CERTIFICATIONS

CERTIFICATION OF PRIMARY PARTICIPANT
REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for major third party contract), _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or has a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property:

3. Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause of default.

(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify any of the statements in this certification, the participant shall attach and explanation to his Certification.)

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT), _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 *ET SEQ.* ARE APPLICABLE THERETO.

_____
Signature and Title of Authorized Official

The undersigned chief legal counsel for the _____ hereby certifies that the _____ has authority under State local law to comply with the subject assurances and that the certification above has been legally made.

_____
Signature of Applicant's Attorney

_____
Date

CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

The Lower Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third party contractor, or potential subcontractor under a major third party contact, _____ certifies by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by and Federal department or agency.

(If the Lower Tier Participant (potential dub-grantee or sub-recipient under an FTA project, potential third party contractor, or potential subcontractor under a major third party contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.)

THE LOWER-TIER PARTICIPANT (POTENTIAL SUB-GRANTEE OR SUB-RECIPIENT UNDER AN FTA PROJECT, POTENTIAL THIRD PARTY CONTRACTOR OR POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIRD PARTY CONTRACT) _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. § 3801 *ET SEQ*. ARE APPLICABLE THERETO.

_____
(Signature and Title of Authorized Official)

The undersigned chief legal counsel for the _____
_____ hereby certifies that the
_____ has authority under State and Local law to comply with the subject assurances and the certifications above has been legally made.

_____
(Signature of Applicant’s Attorney)

_____
(Date)

15. CONTRACTING INFORMATION

A contractor's procurement of goods and services must comply with the Procurement Standards requirements set forth at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, whichever is applicable depending on the type of grantee (part 18 covers State and local governments and part 19 covers non-profit and for-profit entities), and with applicable supplementary DOT or FRA directives or regulations.

16. COMPLIANCE WITH FEDERAL CIVIL RIGHTS LAWS AND REGULATIONS

The contractor must comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the FRA determines otherwise in writing. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88–352) (as implemented by 49 C.F.R. pt 21), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § § 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex, (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § § 1601–1607), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. No. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. No. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental, or financing of housing, (i) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the contractor. Contractors must comply with all regulations, guidelines, and standards adopted under the above statutes. The contractor is also required to submit information, as required, to the FRA Office of Civil Rights concerning its compliance with these laws and implementing regulations, and its activities implementing a grant award.

17. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The FRA encourages its contractors to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined for other DOT operating administrations at 49 C.F.R. pt 26) in carrying out projects funded under ARRA, although FRA contractors are not required to do so. The DOT DBE regulation (49 C.F.R. pt 26) only applies to certain categories of Federal highway, Federal transit, and airport funds. The FRA is not covered under the DOT DBE regulations. The procurement standards applicable to contractors require contractors and subgrantees to take all necessary affirmative steps to assure that minority firms, women's business enterprises and labor surplus area firms are used when possible (see 49 C.F.R. §§ 18.36(e) and 19.44(b)). The contractor is also required to submit information as required to the FRA Office of Civil Rights concerning its activities with respect to DBEs in implementing a grant award.

18. ASSURANCES AND CERTIFICATIONS

Upon acceptance of the grant by the FRA all certifications and assurances provided by the grant recipient through the application process are incorporated in and become part of the grant agreement. Applicable Assurance and Certification forms include SF 424(A)/ (B), SF424(C)/(D) and FRA's Assurances and Certification form. The OMB Standard Forms can be accessed at *http://www.forms.gov*. The FRA Assurances and Certifications Document is available at *http://www.fra.dot.gov/ downloads/admin/assurancesand certifications.pdf*. Contractors will be required to sign the same forms when ARRA funds are involved.

19. DEBARMENT AND SUSPENSION; AND DRUG-FREE WORKPLACE

Contractors must obtain certifications on debarment and suspension for all third party contractors and subgrantees and comply with all DOT regulations, "Nonprocurement Suspension and Debarment" (2 C.F.R. pt 1200) and "Governmentwide Requirements for Drug-Free Workplace (Grants)," (49 C.F.R. pt 32).

20. SAFETY OVERSIGHT

Contractors must comply with any Federal regulations, laws, policy and other guidance that FRA or DOT may issue pertaining to safety oversight in general, and in the performance of any grant award, in particular. FRA has in place a comprehensive system of railroad safety oversight (see 49 C.F.R. pt 209 *et seq.*) that is applicable to railroad operations generally.

21. AMERICANS WITH DISABILITIES ACT (ADA)

Contractors must agree to use funds provided under the grant agreement in a manner consistent with the requirements of Title II of the Americans with Disabilities Act (ADA) of 1990, as amended; Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and both statutes' implementing regulations at 49 C.F.R. pts 27, 37, and 38. DOT (through its delegate FRA) has responsibility to offer technical assistance for the provisions of the ADA about which it issues regulations. 42 U.S.C. § 12206(c)(1) reads: "Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapters of this chapter for which such agency has responsibility." Contractors are strongly encouraged to seek FRA's technical assistance with regard to the accessible features of passenger rail systems, to include accessibility at stations and on railcars. FRA believes such technical assistance is essential where interpretation of DOT's regulatory requirements is necessary and/or before the creation of any new rail system.

22. ENVIRONMENTAL PROTECTION

All facilities that will be used to perform work under an award shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, State and Federal standards.

Contractors will conduct work under an award, and will require that work that is conducted as a result of an award be in compliance with the following provisions, as modified from time to time: Section 114 of the Clean Air Act, 42 U.S.C. § 7414, and Section 308 of the Federal Water Pollution Control Act, 33 U.S.C. § 1318, and all regulations issued there under. Through the grant agreement, contractors will certify that no facilities that will be used to perform work under an award are listed on the List of Violating Facilities maintained by the Environmental Protection Agency (EPA). Contractors will be required to notify the Administrator as soon as it or any contractor or subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to an award is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the contractor's duty of notification shall extend only to those communications of which it is aware, or should reasonably have been aware. Contractors will need to include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds Fifty Thousand Dollars ($50,000.00) in connection with work performed pursuant to an award, the criteria and requirements of this section and an affirmative covenant requiring such contractor or subcontractor to immediately inform the contractor upon the receipt of a communication from the EPA concerning the matters set forth herein.

23. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Specific NEPA-related guidance is included in Section 1.6 of this guidance. The following is a description of FRA's general or standard grant provision on NEPA compliance.

Generally, contractors may not expend any of the funds provided in an award on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. § 4332) (NEPA), the National Historic Preservation Act (16 U.S.C. § 470(f)) (NHPA), and related laws and regulations have been completed and the FRA has provided the Agency with a written notice authorizing them to proceed.

In instances where NEPA approval has not been secured at the time of grant award, contractors are required to assist the FRA in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 C.F.R. pt 1500 *et seq.*), FRA's "Procedures for Considering Environmental Impacts" (45 FR 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under an award, the Agency may be required to conduct certain environmental analyses and to prepare and submit to the FRA draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact Statements). No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State or local significance as so determined by such officials shall be used by contractors without the prior written concurrence of FRA. Contractors shall assist the FRA in complying with these requirements of 49 U.S.C. § 303(c).

24. ENVIRONMENTAL JUSTICE

The contractor will be required to agree to facilitate compliance with the policies of Exec. Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that FRA determines otherwise in writing.

25. OPERATING AND ACCESS AGREEMENTS

As discussed in the guidance, the Agency will be required to reach a written agreement, approved by FRA, with each of the railroads or other entity on whose property the project will be located. Among other things, such railroad/owner agreements shall specify terms and conditions regarding the following issues: responsibility for project design and implementation, project property ownership, maintenance responsibilities, and disposition responsibilities, and the owning entity's commitment to helping to achieve, to the extent it is capable, the anticipated project benefits. If an agreement between the Agency and the owner which substantially addresses the above-referenced issues is already in place as of the date of execution of the grant agreement, the Agency will be required to submit it to FRA for FRA's review and determination of adequacy. However, if either no agreement is in place as of the date of execution of this Agreement, or if an existing agreement has been determined by FRA to be inadequate, the Agency shall, prior to the Agency's execution of an agreement with the owner, submit the final draft of such an agreement to FRA for FRA's review and approval. A finding by FRA that the required approved railroad/owner agreement(s) are in place is a prerequisite for reimbursement of construction-related project expenses.

26. REAL PROPERTY AND EQUIPMENT MANAGEMENT, DISCONTINUANCE OF SERVICE, AND DISPOSITION REQUIREMENTS

The Agency will be required to ensure the maintenance of project property to the level of utility (including applicable FRA track safety standards) which existed when the project improvements were placed in service for a period of a minimum of 20 years from the date such project property was placed in service. In the event that all Intercity Passenger Rail service making use of the project property is discontinued during the 20-year period, the Agency will be required to continue to ensure the maintenance of the project property, as set forth above, for a period of one year to allow for the possible reintroduction of Intercity Passenger Rail service. In the event the Agency should fail to ensure the maintenance of project property, as set forth above, for a period of time in excess of six months, the Agency will be required to refund to FRA a pro- rata share of the Federal contribution, based upon the percentage of the 20- year period remaining at the time of such original default.

The Agency will also be required to acknowledge that the purpose of the project is to benefit Intercity Passenger Rail service. In the event that all Intercity Passenger Rail service making use of the project property is discontinued (for any reason) at any time during a period of 20 years from the date such project property was placed in service, as set forth above, and if such Intercity Passenger Rail service is not reintroduced during a one-year period following the date of such discontinuance, the Agency will be required to refund to FRA, no later than 18 months following the date of such discontinuance, a pro-rata share of the Federal contribution, based upon the percentage of the 20-year period remaining at the time of such discontinuance.

27. ARRA-SPECIFIC GRANT REQUIREMENTS (APPLY TO ARRA-FUNDED GRANTS ONLY)

ARRA contains several specific requirements associated with funding provided in that statute. These include:

Prohibited Activities

None of the funds appropriated or otherwise made available in the grant agreement may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

28. RECOVERY ACT FUNDING ANNOUNCEMENT

The contractor will be required to post a sign at all fixed project locations at the most publicly accessible location and a plaque in all purchased or rehabilitated rail cars announcing that the project or equipment was funded by the FRA with funds provided through ARRA. The configuration of the signs or plaques will be consistent with guidance issued by the Office of Management and Budget (OMB) and/or the Department of Transportation and approved by the FRA.

29. CERTIFICATIONS

As a condition of award, to the extent applicable, contractors must comply with the Certification requirements of ARRA. These include Section 1201 (Maintenance of Effort); Section 1511 (Transparency and Oversight); and Section 1607 (Additional Funding Distribution and Assurance of Appropriate Use of Funds). These Certifications are described in following sections.

Section 1201(a): Maintenance of Effort

By March 19, 2009, State Governors were required to certify to the Secretary of Transportation that the State would maintain its effort with regard to State funding for the types of projects funded by the appropriation, for each amount distributed to a State or a State agency under this program. As part of this Certification, the Governor was required to submit to the Secretary a statement identifying the amount of funds the State planned to expend from State sources as of February 17, 2009, during the period between February 17, 2009 and September 30, 2010, for the types of projects funded by the appropriation. The maintenance of effort requirement in section 1201(a) applies to any grant recipient that is a State government (or agency thereof) that planned, as of February 17, 2009, to expend State funds on the project receiving a High-Speed Rail/Intercity Passenger Rail grant under this guidance during the period between February 17, 2009, and September 30, 2010.

Section 1511: Transparency and Oversight

For grant funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, must certify that the infrastructure investment (1) received the full review and vetting required by law; and (2) that the chief executive accepts responsibility that it is an appropriate use of taxpayer dollars. This certification must be executed and posted on a Web site and linked to *http://www.recovery.gov* prior to the recipient of a High-Speed Rail/ Intercity Passenger Rail grant receiving grant funds. If the project is not included in the STIP, a separate certification for the potential High- Speed Rail/Intercity Passenger Rail project must be executed, attaching the relevant information or linking to a public Web site where the information may be obtained. This certification must include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and must be posted online and linked to the Web site *http://www.recovery.gov*. The certification must also state that the projects have been properly reviewed and vetted and are an appropriate use of taxpayer dollars.

Section 1607: Additional Funding Distribution and Assurance of Appropriate Use of Funds

Section 1607 required that Governors of States receiving funding under the Recovery Act certify by April 3, 2009, that, for grant funds provided to any State or State agency, the State would request and use the funds provided in the Recovery Act and that such funds would be used to create jobs and promote economic growth.

Alternatively, the State legislature could have acted to accept such funds by the adoption of a concurrent resolution. States or State agencies ultimately receiving High-Speed Rail/Intercity Passenger Rail grant funds must ensure that this certification has been completed.

Submission of Certifications Under Sections 1201, 1511, and 1607

All Certifications, once executed, shall be submitted to the Secretary of Transportation, c/o Joel Szabat, Deputy Assistant Secretary for Transportation Policy, at *TigerTeam.Leads@dot.gov*. Certifications may be submitted via e- mail as electronic, scanned copies, with original signed versions to follow via U.S. mail. As required by ARRA, certifications under Section 1511 shall be immediately posted on a Web site and linked to the Web site *http:// www.recovery.gov*.

30. WHISTLEBLOWER PROTECTIONS

The contractor will be required to provide the whistleblower protections required by Section 1553 of ARRA.

31. FALSE CLAIMS ACT

The contractor and sub-recipients will be required to promptly refer to the DOT's Inspector General credible evidence that a principal, employee, agency, contractor, sub-contractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

32. CONTRACTING PROVISIONS

To the maximum extent possible, contracts funded under ARRA shall be awarded as fixed-price contracts through the use of competitive procedures. The Agency will be required to provide a summary of any contract awarded with ARRA funds that is not fixed-price and not awarded using competitive procedures for posting on the Recovery Accountability and Transparency Board's Web site.

33. PROGRAM-SPECIFIC GRANT REQUIREMENTS

These apply to Passenger Rail Investment and Improvement Act of 2008 (PRIIA)-authorized grants, including ARRA grants only, and do not necessarily pertain to grants under Track 3 and Track 4. ARRA funding is provided through several existing FRA programs principally based on programs authorized in PRIIA, and PRIIA includes a number of additional program-specific grant requirements, including:

34. BUY AMERICA

Contractors must comply with the Buy America provisions set forth in 49 U.S.C. § 24405(a) which specifically provide that the Secretary of Transportation may obligate ARRA funds for a High-Speed Rail/Intercity Passenger Rail or congestion project only if the steel, iron, and manufactured goods used in the project are produced in the United States. The Secretary (or the Secretary's delegate, the FRA Administrator) may waive this requirement if the Secretary finds that applying this requirement would be inconsistent with the public interest; the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality; rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or including domestic material will increase the cost of the overall project by more than 25 percent. For purposes of implementing these requirements, in calculating the components' costs, labor costs involved in final assembly shall not be included in the calculation. If the Secretary determines that it is necessary to waive the application of the Buy America requirements, the Secretary is required before the date on which such finding takes effect to publish in the Federal Register a detailed written justification as to why the waiver is needed; and provide notice of such finding and an opportunity for public comment on such finding, for a reasonable period of time, not to exceed 15 days. The Secretary may not make a waiver for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country

has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection, and the government of that foreign country has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies. The Buy America requirements described in this section shall only apply to projects for which the costs exceed $100,000.

35. OPERATORS DEEMED RAIL CARRIERS

A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this program shall be considered a rail carrier as defined in Section 49 U.S.C. § 10102(5) for purposes of title 49 of the United States Code and any other statute that adopts the definition found in 49 U.S.C. § 10102(5) including the Railroad Retirement Act of 1974 (45 U.S.C. § 231 *et seq.*); the Railway Labor Act (43 U.S.C. § 151 *et seq.*); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 *et seq.*) (*see* 49 U.S.C. § 24405(b)).

36. RAILROAD AGREEMENTS

As a condition of receiving a grant under this program for a project that uses rights-of-way owned by a railroad, the A g e n c y shall have in place a written agreement between the A g e n c y and the railroad regarding such use and ownership, including any compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with the railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that the A g e n c y complies with liability requirements consistent with 49 U.S.C. § 28103. Agencies that use rights-of-way owned by a railroad must comply with FRA guidance regarding how to establish a written agreement between the applicant and the railroad regarding use and ownership as discussed in Appendix 3.2.11. (*see* 49 U.S.C. § 24405(c)).

37. LABOR PROTECTION

As a condition of receiving a grant under this program for a project that uses rights-of-way owned by a railroad, the Agency must agree to comply with the standards of 49 U.S.C. § 24312, as such section was in effect on September 1, 2003, with respect to the project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a) and the protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. § 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this program. (*see* 49 U.S.C. § 24405(c)).

38. DAVIS-BACON ACT

Projects funded through ARRA are required to comply with the Davis- Bacon Act (40 U.S.C. § 3141 *et seq.*). The Davis-Bacon Act is a measure that fixes a floor under wages on Federal government projects and provides, in pertinent part, that the minimum wages to be paid for classes of workers under a contract for the construction, alteration, and/or repair of a Federal public building or public work, must be based upon wage rates determined by the Secretary of Labor to be prevailing for corresponding classes of workers employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed. Two provisos related to the Davis-Bacon Act are included in ARRA related to HSIPR service. The first requires that funded projects must comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code. The second provides that 49 U.S.C. § 24405 shall also apply to the funded projects. The first proviso mandates compliance with the Davis-Bacon Act generally since it is included in subchapter IV of Chapter 31 of title 40. The second proviso also mandates compliance the Davis-Bacon Act through subsection 24405(c) which provides that the Secretary shall require as a condition of making any grant that uses rights-of-way owned by a railroad that the applicant agree to comply with the standards of Section 24312 of title 49 with respect to the project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). Section 24312 provides that Amtrak shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed under an agreement made under Section 24308 will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under Sections 3141–3144, 3146 and 3147 of title 40 and that wages in a collective bargaining agreement negotiated under the Railway Labor Act are deemed to comply with Sections 3141–3144, 3146, and 3147 of title 40. Section 24308 authorizes Amtrak to enter into agreements with rail carriers or regional transportation authorities to use facilities of and have services provided by the carrier or authority under terms on which the parties agree.

FRA has concluded that the two Davis-Bacon requirements can be reconciled in a manner that allows the HSIPR Program to be implemented in a way that is both reasonable and consistent with current practices. For projects that use or propose to use rights-of-way owned by a railroad, the specific provisions of 24405(c) would apply and applicants would be required to comply with the standards of 49 U.S.C. § 24312 (prevailing wages) in the same manner that Amtrak is required to comply with those standards for construction projects it might undertake. It follows that wages in a collective bargaining agreement negotiated under the Railway Labor Act would be deemed to comply with Davis-Bacon Act requirements for these projects. For projects that do not propose to use rights-of-way owned by a railroad, normal Davis-Bacon Act requirements would apply and there would be no specific exemption for wages arrived at through a collective bargaining agreement negotiated under the Railway Labor Act. Wage rates on these projects would have to meet the Secretary of Labor's prevailing wage standards as described above.

39. PROJECT LABOR AGREEMENTS

Exec. Order No. 13502, Use of Project Labor Agreements for Federal Construction Projects, issued by President Obama on February 6, 2009, authorizes Federal agencies in awarding any contract in connection with large- scale Federal government construction projects to, on a project-by-project basis, require the use of a project labor agreement by a contractor where use of such an agreement will (i) advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law. At this time, the Executive Order does not apply directly to recipients of financial assistance to either require or preclude the use of a project labor agreement. Rather, the Order directs the Director of OMB, in consultation with the Secretary of Labor and with other officials as appropriate, to provide the President within 180 days of the date of the Order (August 5, 2009) with recommendations about whether broader use of project labor agreements, with respect to both construction projects undertaken under Federal contracts and construction projects receiving Federal financial assistance, would help to promote the economical, efficient, and timely completion of such projects. FRA will issue additional guidance to applicants following submission of the required report and any further action by the President or OMB.

40. REPLACEMENT OF EXISTING INTERCITY PASSENGER RAIL SERVICE

Grant recipients providing Intercity Passenger Rail transportation that begins operations after October 16, 2008 on a project funded in whole or in part by grants made under this program, that replaces Intercity Passenger Rail service that was provided by Amtrak, unless such service was provided solely by Amtrak to another entity as of such date, are required to enter into a series of agreements with the authorized bargaining agent or agents for adversely affected employees of the predecessor provider. (*see* 49 U.S.C. § 24405(d)).

GENERAL REQUIREMENTS

41. STANDARD REPORTING REQUIREMENTS

- Progress Reports—Progress reports must accompany each request for payment, and at a minimum are to be submitted quarterly. These reports shall relate the state of completion of items in the scope of work to expenditures of the relevant budget elements. The Contractor shall furnish the quarterly progress report to the Agency on or before the 15th calendar day of the month following the end of the quarter being reported. Each quarterly report shall set forth concise statements concerning activities relevant to the project, and shall include, but not be limited to, the following: (a) An account of significant progress (findings, events, trends, etc.) made during the reporting period; (b) a description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in this agreement, together with recommended solutions

or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FRA or the Agency, or a statement that no problems were encountered; and (c) an outline of work and activities planned for the next reporting period.

- Quarterly Financial Status Report (SF–269)—The Contractor must report obligations and expenditures on a quarterly basis using the SF–269, which is due within 15 days of the end of each calendar quarter (*e.g.,* for quarter ending March 31, the SF–269 is due no later than April 30). A report must be submitted for every quarter of the period of performance, including partial calendar quarters, as well as for periods where no activity occurs. The final SF–269 is due 90 days after the end date of the period of performance. Financial Status Reports (SF–269) must be filed online through GrantSolutions by the Agency.
- Quarterly Federal Cash Transactions Report—The Agency will be required to submit a SF–272, Federal Cash Transaction Report (and when necessary the continuation sheet SF–272a), for grants paid by Treasury Check Advances, or Electronic Transfer of Funds. FRA will use this report to monitor cash advanced to the Grantee and to obtain disbursement or outlay information. Forecasts of Federal cash outlays are required in the "Remarks" section of the report. Contractors will furnish the quarterly Federal cash transaction report to the Agency on or before the 15th calendar day of the month following the end of the quarter being reported.
- Interim and/or Final Report(s)—Upon project completion, the Agency will be required to furnish to the FRA a Summary Project Report detailing the results and benefits of the improvement efforts due by the expiration date of the grant.

42. ARRA-SPECIFIC REPORTING REQUIREMENTS

ARRA Section 1201 Report— Periodic Reports—Each grant recipient will be required to submit periodic reports to the FRA as described in this paragraph not later than February 17, 2010, February 17, 2011, and February 17, 2012. The Periodic Reports shall include information describing: (1) The amount of Federal funds appropriated, allocated, obligated, and outlaid under the grant agreement; (2) the number of projects that have been put out to bid under the grant agreement and the amount of Federal funds associated with such projects; (3) the number of projects for which contracts have been awarded under the grant agreement and the amount of Federal funds associated with such contracts; (4) the number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts; (5) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts; (6) the number of direct, on- project jobs created or sustained by the Federal funds provided for projects under the grant agreement and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of jobs created and the total increase in employment since February 17, 2009; and (7) information tracking the actual aggregate expenditures by the Agency from its own sources for projects eligible for funding under this agreement during the period beginning on February 17, 2009 through September 30, 2010, as compared to

the level of such expenditures that were planned to occur during such period as of February 17, 2009. DOT or FRA may issue additional guidance on the preparation and submission of Periodic Reports.

- Section 1512(c)—Jobs Accountability Reports—Not later than three days after the end of each quarter, each contractor will be required to submit a Jobs Accountability Report to the Agency that contains: (1) The total amount of ARRA funds received pursuant to this agreement; (2) the amount of ARRA funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which ARRA funds were expended or obligated, including—(A) the name of the project or activity; (B) a description of the project or activity; (C) an evaluation of the completion status of the project or activity; (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and (E) detailed information on any subcontracts or subgrants awarded by the contractor to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109–282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of OMB. OMB may issue additional guidance on the preparation and submission of Jobs Accountability Reports. The grant recipient must register with the Central Contractor Registration (CCR) database or complete other registration requirements as determined by the Director of OMB.
- Section 1609: Environmental Reporting—Section 1609(c) of ARRA requires that Federal agencies report via the President (specifically, to the White House Council on Environmental Quality) every 90 days following enactment of ARRA on the status of projects funded under ARRA with respect to compliance with NEPA. Contractors may be requested to submit information to the Agency to assist in completing this report.
- Additional Information—To satisfy the purposes of the ARRA, contractors may be required to provide additional information in response to requests from OMB, the Congressional Budget Office, the Government Accountability Office, or the Department's Inspector General. The Agency will inform contractors if and when such additional reports or information are required.

43. AUDIT REQUIREMENTS

Grant recipients that expend $500,000 or more of Federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with U.S. General Accountability Office, Government Auditing Standards, located at *http://www.gao.gov/govaud/ ybk01.htm*, and OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, located at *http://www.whitehouse.gov/omb/ circulars/a133/a133.html*. Audit reports are currently to be submitted to the Federal Audit Clearinghouse no later than nine months after the end of the recipient's fiscal year. In addition, FRA and the Comptroller General of the United States shall have access to any books, documents, and records of grant recipients for audit and examination purposes. The contractor will also give the Agency, FRA, or the Comptroller, through any

authorized representative, access to, and the right to examine all records, books, papers or documents related to the grant. The Contractor shall require that sub-grantees comply with the audit requirements set forth in OMB Circular A–133. The Contractor is responsible for ensuring that sub-recipient audit reports are received and forwarded to the Agency so any audit findings can be resolved.

44. MONITORING REQUIREMENTS

Grant recipients will be monitored periodically by FRA, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The recipient is responsible for monitoring award activities, to include sub-awards, to provide reasonable assurance that the Federal award is administered in compliance with requirements. Responsibilities include the accounting of recipients and expenditures, cash management, maintaining of adequate financial records, and refunding expenditures disallowed by audits.

45. CLOSEOUT PROCESS

Project closeout occurs when all required project work and all administrative procedures described in 49 C.F.R. pt 18, or 49 C.F.R. pt 19, as applicable, have been completed, and when FRA notifies the grant recipient and forwards the final Federal assistance payment, or when FRA acknowledges the grant recipient's remittance of the proper refund. Project closeout shall not invalidate any continuing obligations imposed on the Grantee by an award or by the FRA's final notification or acknowledgment. Within 90 days of the Project completion date or termination by FRA, Grantees agree to submit a final Financial Status Report (Standard Form 269), a certification or summary of project expenses, and third party audit reports, as applicable. The Contractor may be required to provide information to the Agency to meet this requirement.

46. FREEDOM OF INFORMATION ACT (FOIA)

As a Federal agency, the FRA is subject to the Freedom of Information Act (FOIA) (5 U.S.C. § 552), which generally provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Grant applications and related materials submitted by applicants pursuant to this guidance would become agency records and thus subject to the FOIA and to public release through individual FOIA requests. ARRA also mandates broad public dissemination of information related to the expenditure of funds through reporting requirements and website postings that are addressed in other sections of this guidance. President Obama's March 20, 2009 Memorandum for the Heads of Executive Departments and Agencies on Ensuring Responsible Spending of Recovery Act Funds mandates the strongest possible efforts to ensure public transparency and accountability of ARRA expenditures. Consistent with these mandates, it is FRA's intention to employ a transparent process in distributing and overseeing the expenditure of ARRA funds. FRA also recognizes that certain information submitted in support of an application for funding in accordance with this guidance could be exempt from public release under FOIA as a result of the application of one of the FOIA exemptions, most particularly Exemption 4, which protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. § 552(b)(4)). In the context of this grant program, commercial or financial information obtained from a person could be confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained (see *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974)). Entities seeking exempt treatment must provide a detailed statement supporting and justifying their request and should follow FRA's existing procedures for requesting confidential treatment in the railroad safety context found at 49 C.F.R. § 209.11. As noted in the Department's FOIA implementing regulation (49 C.F.R. pt 7), the burden is on the entity requesting confidential treatment to identify all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed (*see* 49 C.F.R. §7.17). The final decision as to whether the information meets the standards of Exemption 4 rests with the FRA.